STATE OF MICHIGAN

COURT OF APPEALS

GRACE WILLIAMS,

Plaintiff-Appellant,

v

AUTOALLIANCE INTERNATIONAL, INC., JAMES SOLBERG, BRUCE BOWMAN and HENRY SCHULTZ,

Defendants-Appellees,

and

FORD MOTOR COMPANY, INC.,

Defendant.

UNPUBLISHED
July 16, 1999

No. 206917
Wayne Circuit Court
LC No. 96-623095 CZ

Before: Doctoroff, P.J., and Markman and J.B. Sullivan*, JJ.

PER CURIAM.

Plaintiff, Grace Williams, appeals as of right from an order granting summary disposition to defendants Autoalliance International, Inc., James Solberg, Bruce Bowman and Henry Schultz, pursuant to MCR 2.116(C)(10) in this racial discrimination case.[1] We affirm.[2]

Plaintiff alleged that the individual defendants were agents of defendants Ford and Autoalliance. Plaintiff further alleged that the defendants were either employers, or agents of employers, for purposes of the Elliot-Larsen Civil Rights Act, MCL 37.2201 *et. seq.*; MSA 3.548(201) *et seq*. She claimed that she was discriminated against because she was an African-American. Plaintiff claimed that some of the discriminatory acts included failure to promote, failure to follow internal employment procedures, interference with her duties, and discharging her, all on account of race. Plaintiff also alleged that she engaged in protected activities while employed by defendants, which included filing formal and informal complaints about the treatment of African-American employees. Plaintiff contends that, in response to

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

this, defendants retaliated against her by interfering with her duties, failing to promote her, and eventually terminating her.

Plaintiff first argues that there is a genuine issue of material fact precluding summary disposition in this matter. We review a trial court's grant or denial of a motion for summary disposition de novo. *Hawkins v Mercy Health Services*, 230 Mich App 315, 324; 583 NW2d 725 (1998). A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. *First Security v Aitken*, 226 Mich App 291, 304; 573 NW2d 307 (1997). In ruling on the motion, the trial court must consider the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence submitted by the parties. *Id.* Giving the benefit of all reasonable doubt to the opposing party, the trial court must determine whether a record might be developed that would leave open an issue of material fact upon which reasonable minds could differ. *Id*. The moving party must specifically identify the issues on which there are no disputed facts, and that party also must support its position with affidavits, depositions, or other documentary evidence. *Munson Medical Ctr v Auto Club Ins Ass'n*, 218 Mich App 375, 386; 554 NW2d 49 (1996). The opposing party then bears the burden of showing by evidentiary materials that a dispute exists regarding a genuine issue of material fact. *Munson, supra*. A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact. *Cloverleaf Car Co v Wykstra Oil Co*, 213 Mich App 186, 192-93; 540 NW2d 297 (1995).

Plaintiff's complaint alleged that defendants intentionally discriminated against her, in violation of the Michigan Civil Rights Act. A claim of intentional discrimination may be proved by either indirect or direct evidence. *Harrison v Olde Financial Corp*, 225 Mich App 601, 606; 572 NW2d 679 (1997). The indirect evidence test was set forth by the United States Supreme Court in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). In *Town v Michigan Bell*, 455 Mich 688, 695; 568 NW2d 64 (1997), the Michigan Supreme Court articulated the *McDonnell Douglas* test in the following manner:

> The *McDonnell Douglas* prima facie approach requires an employee to show that the employee was (1) a member of a protected class, (2) subject to an adverse employment action, (3) qualified for the position, and that (4) others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct. [*Town, supra*, at 695.]

If a prima facie case of discrimination has been established, the court then examines whether a legitimate, non-discriminatory reason has been articulated by defendants. *Harrison, supra*, at 608. If defendants can articulate such a reason, the next consideration is whether plaintiff can prove by a preponderance of the evidence that defendants' articulated reason was a mere pretext for discrimination. *Id*.

In her complaint, plaintiff alleged that defendants interfered with the performance of her duties because she was African-American. Further, in her deposition, she testified that she informed James King, who was responsible for the intake of complaints of discrimination, several times that she was not getting the support she required and that she felt it was due to her race. Plaintiff also testified that King

told her that others in the company had experienced racial discrimination. At a another meeting with King, plaintiff again expressed her concern that she was being treated differently because of her race. King suggested that plaintiff speak with Charles Corbett, her employer at Autoalliance, about the problem. Plaintiff stated that, after she expressed her concerns to Corbett, she noticed that Corbett responded to her in a different way. Further, plaintiff contends that white employees with less experience and education received promotions while plaintiff was denied these positions. Finally, plaintiff alleged that black employees were required to take tests and interview multiple times, and were subjected to higher standards than white employees when applying for promotions. In his affidavit, King averred that "plaintiff mentioned to me that she did not know why Mr. Corbett was not giving her more support and wondered whether it was because Mr. Corbett and her co-workers had worked together for an extended period or whether it might have something to do with plaintiff's race." King went on to state that "plaintiff threw out the possibility that her race may be a factor only as an aside."

We do not believe that plaintiff has set forth a claim of intentional discrimination here through indirect evidence. Assuming that plaintiff was able to present a prima facie case of discrimination, defendants articulated non-discriminatory reasons for the specific actions which plaintiff claimed were indirect evidence of discrimination. Viewing the evidence in a light most favorable to plaintiff, reasonable minds could not differ as to the conclusion that the stated reasons were not a pretext for discrimination. *Town,* at 698.

Defendants' brief on appeal contains a myriad of non-discriminatory reasons for their actions. Defendants argue that during plaintiff's interview process, she was clearly informed that the position for which she was interviewing required little or no direct supervision, which is why she received very little employer support. Further, defendants also point to plaintiff's own deposition testimony. During her deposition, plaintiff testified that when she was hired, a board was installed in her office on which she was to note when she left the office. Plaintiff testified that there was no sign-out board until she was hired. However, plaintiff went on to state that everyone in the office was required to note on the board when they left the office. Plaintiff also complained that she was not allowed to attend seminars to enhance her skills, yet testified that she never specifically asked to attend any seminars. Finally, plaintiff stated that she was singled out because she was required to answer phones and support the service counter. However, plaintiff testified that white employees were also required to do these jobs. Plaintiff was asked whether Corbett himself ever worked the service counter, to which plaintiff responded that was "not the point." Defendants contend that this evidence demonstrates that plaintiff was treated the same as white employees.

Plaintiff also averred that African-American employees were subject to more rigorous standards when applying for promotions and that less qualified white employees received promotions. In this regard, defendants point to plaintiff's deposition testimony in which she stated that she was not making any claims regarding promotions or promotion procedures. Plaintiff stated that there was "no position to be promoted into," and that nothing regarding promotion arose during the time she was employed by defendants. In our judgment, plaintiff clearly and unequivocally stated in her deposition that she was not making any claims as to promotions or promotion procedures. Plaintiff cannot now create a genuine

issue of material fact by submitting an affidavit that contradicts this testimony. *Palazzola v Karmazin Prods Corp*, 223 Mich App 141, 155; 565 NW2d 868 (1997).

Plaintiff here has also not presented direct evidence of intentional discrimination. The principal problem with the racial slurs that plaintiff claims constitute such evidence is that none of them are attributable to a decision maker. Plaintiff points to several statements made by supervisors and managers at defendant Autoalliance, but plaintiff does not point to any racial slurs made by persons capable of making decisions with regard to plaintiff's employment. Michigan law states that an example of direct evidence is a racial slur by a decision maker. *Harrison, supra*, at 610. At least two federal circuits agree that racially discriminatory statements by someone other than a decision maker are not admissible and, in fact, are more prejudicial than probative. See *Nichols v Loral Vought Systems Corp*, 81 F3d 38, 41-2 (CA 5, 1996); *Slathar v Sather Trucking Corp*, 78 F3d 419-20 (CA 8, 1996). Therefore, we hold that plaintiff's claim that there is direct evidence of racial discrimination sufficient to defeat a motion for summary disposition also fails.

Plaintiff finally argues that the trial court improperly made credibility determinations and failed to listen to the evidence before it. We disagree. Further, plaintiff has effectively abandoned this issue on appeal. Plaintiff provides no citation to the record in support of her contentions as she is required to do. MCR 7.212(C)(7). Further, in plaintiff's entire discussion of the issue, there is not one citation to any authority. When a party fails to cite authority in support of its argument, the issue is abandoned for purposes of appeal. *Schellenberg v Rochester Michigan Lodge & Elks Lodge 2225*, 228 Mich App 20, 49; 577 NW2d 163 (1998).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Stephen J. Markman
/s/ Joseph B. Sullivan

[1] Ford Motor was dismissed from this lawsuit and is not a party to this appeal.

[2] This opinion is released following the failure of the parties to submit their stipulation for dismissal within twenty-one days as directed by this Court at oral argument.